STATE OF MICHIGAN

COURT OF APPEALS

VERIZON NORTH, INC.,

Petitioner-Appellant,

and

CONTEL OF THE SOUTH, INC., d/b/a
VERIZON NORTH SYSTEMS,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

MICHIGAN EXCHANGE CARRIERS
ASSOCIATION, INC.,

Respondent-Appellee.

UNPUBLISHED
August 17, 2010

No. 282051
MPSC
LC No. 00-014905

Before: K.F. KELLY, P.J., and JANSEN and ZAHRA, JJ.

PER CURIAM.

Appellants Verizon North, Inc., and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon) appeal from orders entered by appellee Michigan Public Service Commission (PSC) adjudicating the complaint filed by respondent Michigan Exchange Carriers Association, Inc (MECA), and addressing Verizon's petition for rehearing and other post-collaborative matters. We affirm in part and reverse in part.

I. GENERAL OVERVIEW

This case concerns a dispute between Verizon and MECA, an association whose membership is comprised of small rural telephone companies known as incumbent local exchange carriers (ILECs), regarding measurement of usage and payment of charges based on usage.

Traditionally, an ILEC provided telephone service to an assigned area, referred to as a franchise area or exchange, and the ILEC serving an area was the only local telephone company that operated in that particular area.[1] Telephone calls, known in the industry as call traffic, fit into definite classifications: (1) a call that originates in one ILEC exchange and terminates in the same ILEC exchange; (2) a call that originates in one ILEC exchange and terminates in another exchange in the same ILEC; (3) a call that originates in one ILEC and terminates in another ILEC; and (4) a call that originates in one ILEC, is sent through an intermediate ILEC, and terminates in a third ILE. An ILEC can be an originating carrier (the carrier that initiates the call for the customer), a terminating carrier (the carrier that completes the call to the customer receiving the call), or a forwarding carrier (the carrier that transports the call between the originating carrier and the terminating carrier).

Verizon plays several roles in the telecommunications field. Verizon operates several tandems[2] that connect with ILECs' end offices. In this role, Verizon acts as a forwarding carrier and routes calls through its tandems and forwards them to the ILECs' end offices, thereby allowing local customers to receive the calls. As a toll (also known as long distance) provider, Verizon uses the ILECs' terminating switched toll access services to terminate toll calls. In addition, Verizon uses the ILECs' local transport and termination services to terminate local calls in areas where the ILECs' customers are located in Verizon's designated local calling area.

Call traffic is generally divided into the categories of local calls and long distance calls. Local calls typically begin and end in the same area, which can include adjacent exchanges. Long distance calls originate and terminate in non-adjacent ILECs.

II. UNDERLYING FACTS AND PROCEEDINGS

A dispute arose between Verizon and MECA (on behalf of the ILECs) with regard to the measurement of usage and payment of usage-based charges. The four principal areas of dispute included: (1) terminating toll access services, i.e., the services provided by ILECs to Verizon to terminate toll calls from Verizon's customers (thereby allowing Verizon to access the ILECs' local exchanges to complete calls); (2) local transport and termination services, i.e., the services provided by ILECs to terminate Verizon's local calls sent to the ILECs; (3) originating toll access services, i.e., the services that ILECs provided to Verizon to allow toll calls from Verizon's customers to originate from within the ILECs' local exchanges (thereby allowing Verizon to access the local network to initiate a toll call); and (4) billing and collection services, i.e., the services that ILECs performed for Verizon in connecting with performing originating toll

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[1] Today, companies compete for business in such areas. This type of competition is not at issue in this case.

[2] A tandem is an industry term that refers to a switching machine that interconnects numerous local exchanges and numerous long distance providers.

access services that aided Verizon in billing its toll customers in the local exchange (whereby the ILECs collected certain payments and remitted the funds to Verizon, and were compensated for these activities by Verizon).

In May 2006 MECA filed an application, later deemed a complaint by the PSC, seeking to resolve the disputes between its members and Verizon. In regard to the first and primary area of dispute, terminating toll access, the application stated:

> 6. The first area of dispute relates generally to terminating Feature Group C ("FGC") switched access service provided in connection with toll calls that terminate on the facilities of Rural ILECs. Switched access charges in the terminating direction are based on tariffed rates that are charged on a "per access minute" basis. Thus, Verizon is required to pay the tariffed switched access rate contained in MECA's MPSC Tariff No. 25 to the Rural ILECs for each access "minute of use" for calls that are terminated on a Rural ILEC's facilities.
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> 7. More specifically, this portion of the dispute between the parties centers upon how the terminating minutes of use are calculated. Until recently, in the absence of measured actual usage, terminating minutes of use were estimated or derived by using a ratio known as a Terminating-to-Originating ratio, or a "T/O ratio." As a result of MPSC Case No. U-9590, Verizon had paid the affected Rural ILECs based on estimated terminating minutes of use calculated pursuant to agreed-upon T/O ratios.[2] These T/O ratios were used to derive or estimate the number of access minutes of use for calls where Verizon is the toll carrier of the calls that terminate in the Rural ILECs' exchanges. The number of terminating access minutes of use is derived from the number of originating access minutes of use. Rural ILECs provide originating access and can identify the toll carriers who carry the originating calls from the Rural ILEC exchanges to other exchanges. The Rural ILECs can also identify the minutes of use for originating toll calls. The T/O ratio is applied to the originating minutes of use of each toll carrier that originates calls from a Rural ILEC exchange to derive or estimate terminating minutes of use for that same toll carrier (when measuring capacity does not exist in the terminating direction). The toll carrier then pays the Rural ILEC the tariffed rate in MECA's MPSC Tariff No. 25 multiplied by the derived or estimated terminating minutes of use.
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> 8. In March 2005, Verizon notified several Rural ILECs that it intended to discontinue providing originating intraLATA toll service in their exchanges. A T/O ratio cannot be used to estimate terminating usage after Verizon discontinues originating service in an exchange since, with zero originating usage, it mathematically cannot produce a result. In addition, Verizon, on March 31, 2005, notified several Rural ILECs that Verizon was no longer willing to pay based on estimated usage derived from the T/O ratio methodology. Verizon declared that it would provide a report identifying "processed" minutes of use "to be based in the invoicing process." Verizon further directed the MECA companies to resubmit their invoices for February 2005. Subsequently, on April 21, 2005, Verizon indicated to MECA that estimates should not be used when actual usage is available.

9. MECA agrees with Verizon that actual usage is preferable and that charges should be based on actual usage when actual usage is available, accurate, and verifiable. In this regard, each of the Rural ILECs with an exchange that subtends a Verizon tandem now has the capacity to measure and record actual usage for both terminating and originating traffic. Most of the Rural ILECs are now billing Verizon based on the measured actual usage that they record at their end offices. The Rural ILECs changed from billing based on derived usage to billing based on measured actual usage when their switches became capable of doing this, with many of them making the necessary changes when Verizon discontinued providing originating toll service in their exchanges. These Rural ILECs measure terminating actual usage at the end office and bill it to Verizon in accordance with the well-established Residual Usage Methodology.

10. Verizon disagrees, however, with the manner in which the usage is determined and billed to Verizon, and Verizon is paying only for usage that Verizon determines is appropriate in accordance with its own usage derivation system, known as the IntraLATA Terminating Access Compensation ("ITAC") system. Verizon even indicated that it was retroactively altering its payments for two years prior to its discontinuance of toll service to substitute its derived ITAC usage for the usage from the agreed-upon T/O ratios.

11. The Residual Usage Methodology that is used by the Rural ILECs is based on measured actual usage and is the proper methodology for billing Verizon for terminating toll access service.

12. Verizon has attempted to impose its derived ITAC usage on the Rural ILECs while it has chosen not to utilize other alternatives, such as dedicated trunks, sending signaling information with each call, or sending appropriate electronic call detail records on a monthly basis after the fact. [MECA's Application, pp 4-6.]

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[2] Case No. U-9590 was an application filed by MECA on behalf of its then 36 member companies seeking authority to revise its MPSC Tariff No. 25 to establish new rates and charges for access service. In the Commission's November 21, 1990, Order in Case U-9590, the Commission ordered the continued use of the current T/O ratios by adopting a settlement agreement entered into by the parties, stating in relevant part, "Existing terminating and originating access minute of use ratios will continue to be used by MECA member companies for purposes of billing access charges."

MECA alleged that Verizon had the ability to identify all calls, including its own, for the benefit of the ILECs, but refused to do so. MECA asserted that Verizon was attempting to dictate the method by which ILECs would bill Verizon, and that ILECs were not obligated by Tariff No. 25 or any PSC order to use Verizon's own billing method to bill Verizon. MECA contended that because Verizon unilaterally made retroactive changes to the compensation it paid prior to February 2005, when the T/O ratios were in effect, Verizon was in arrears for its toll access bills, and the ILECs were "entitled to payment based on the T/O ratios previously agreed upon in Case No. U-9590 through April 2005, to payment based on the Residual Usage Methodology when it was implemented by the Rural ILECs, and to late fees pursuant to MECA's Tariff No. 25 for all payments withheld." MECA claimed that, "[t]he usage derived by Verizon's ITAC methodology results in the payment of terminating switched access charges significantly less than Verizon would pay if it were billed for actual measured terminating minutes of use[,]" that, "Verizon's imposition of its ITAC methodology to pay the Rural ILECs for terminating calls would result in discriminatory and advantageous treatment as compared with other telecommunications providers[]" because the ILECs billed other toll carriers for actual minutes of use, and that Verizon, and not the ILECs, was responsible for paying termination charges for traffic sent to the ILECs that was not properly identified.

Regarding the second area of dispute, local transport and termination service, the application stated that, "[t]he Rural ILECs provide services to Verizon to terminate local calls in their exchanges when Verizon has specified in its local tariff that its local service area for Extended Area Service or Expanded Local Calling includes the nearly Rural ILEC exchanges[,]" and that the ILECs billed for termination services pursuant to MECA's Local Transport and Termination Service tariff, MPSC Tariff No. 23, or the ILECs' EAS Termination or Local Call Termination tariff, MPSC Tariff No. 10. The application noted that the ILECs had satisfied federal requirements to establish "arrangements" for transporting and terminating telecommunications without negotiating interconnection agreements (see 47 USC 251(b)(5), (c)(1), and (f)(1)), and that Verizon had benefited from the services provided by the ILECs, but had wrongfully withheld proper payment for those services.

Regarding the third area of dispute, originating toll access, the application stated that, "Verizon has not paid for some originating toll access traffic where Verizon was the end user's pre-selected toll carrier and therefore was the originating toll access purchaser[,]" that the ILECs billed Verizon for this traffic pursuant to MPSC Tariff No. 25, but that Verizon had given no explanation for its failure to pay for the traffic and was responsible for the unpaid charges.

Regarding the fourth area of dispute, billing and collection, the application stated that Verizon was not paying for some billing and collection services where it was the originating toll carrier, that Verizon had an agreement with each ILEC for payment for such services, and that Verizon had provided no legitimate reason for withholding payment for the services.

MECA requested that the PSC declare, inter alia, that: Verizon was required to "pay for all terminating toll access calls based on the T/O ratios previously agreed to in Case No. U-9590 for time periods when measurement of actual usage was not available[,]" that Verizon was required to "pay for all terminating toll access calls based on actual usage determined by the Rural ILECs after they implemented the Residual Usage Methodology[]" and that the "Residual Usage Methodology . . . continued "to be a proper and legitimate method of measuring and billing actual terminating usage[,]" that Verizon was responsible for identified traffic, that Verizon owed "the full amount of charges for originating toll access as billed by the Rural ILECs[,]" the "billing and collection fees based on the usage submitted by the Rural ILECs[,]" that Verizon was required to pay "local transport and termination charges for termination of local traffic pursuant to the Rural ILECs' applicable tariffs[,]" and that the ILECs were entitled to late fees for the amounts due from Verizon.

Verizon filed a counterclaim alleging that MECA's ILECs billed Verizon for terminating access services and that Verizon paid the charges, but that in fact Verizon did not receive the services.

III. THE PSC'S DECISIONS

On October 25, 2006, the Administrative Law Judge (ALJ) issued a Proposal for Decision. The ALJ found that the record contained insufficient evidence to support MECA's claims or Verizon's counterclaims regarding the appropriate method for terminating toll access traffic (the first area of dispute). The ALJ recommended that the PSC establish a collaborative process through which the parties could address the issue on a going forward basis. In regard to local transport and termination (the second area of dispute), the ALJ determined that Verizon was obligated to pay the charges imposed pursuant to the applicable tariff. In regard to originating switched access service and billing and collection services (the third and fourth areas of dispute), the ALJ determined that the parties appeared to have resolved these issues.

On December 21, 2006, the PSC issued its initial decision on MECA's complaint and Verizon's counter complaint.

In regard to the issue of terminating toll access, the PSC noted that the industry developed T/O ratios to estimate access service usage because generally, ILECs lacked the technical capacity to measure actual minutes of use for calls terminated in their facilities. The use of these T/O ratios was authorized in Case No. U-9590. The PSC observed that most ILECs that subtended a Verizon tandem acquired the technical capacity to measure actual minutes of use for terminating toll access in 2005, at about the same time that Verizon provided notice of its intent to stop providing originating intraLATA toll service in some rural exchanges. Verizon's decision rendered the T/O ratios unusable, and thus forced the ILECs to install the software necessary to enable them to utilize the residential usage methodology (RUM) for measuring actual minutes of use. Under that method, if the carrier of a call can be identified by the ILEC's facilities, that carrier is billed for the ILEC's termination services. The residual amount for all unidentified calls would be billed to Verizon.

The PSC found that the record evidence did not establish that the ILECs unreasonably delayed their installation of the software necessary to enable them to use the RUM for measuring actual minutes of use, and that each ILEC was entitled to use the T/O ratios until it installed the RUM software. Furthermore, the PSC found that Verizon was not entitled to unilaterally dictate the method by which the number of minutes of use would be calculated by recalculating its bills and withholding payment.

In regard to the use of the RUM versus Verizon's ITAC method to calculate actual minutes of use, the PSC found that while the RUM was "an acceptable method to use for billing purposes[,]" the record did not establish why the carriers of some call traffic could not be identified. Therefore, the PSC declined to order Verizon to pay the total of all bills calculated pursuant to the RUM.[3] Nevertheless, the PSC determined that the ILECs' practice of billing Verizon for calls for which Verizon failed to provide information that would allow the ILECs to identify the carriers was consistent with law and PSC policy. The PSC reasoned that Verizon was in a better position than the ILECs to obtain carrier identification information, and that if Verizon failed to do so, it could be billed for service provided by the ILECs for the unidentified calls (PSC decision, p 18).

The PSC adopted the ALJ's recommendation that the parties, assisted by the PSC Staff, engage in a collaborative effort. The PSC stated:

> The Commission agrees with the ALJ that the best result for all parties concerned will be reached through a collaborative effort between the parties, assisted by the Staff. In addition to the charge to reach consensus related to a measuring method, the collaborative should address the accuracy of the RUM-based bills, consistent with the Commission's finding that Verizon may be held responsible for calls it does not identify, but sends to the rural ILECs over common trunks with its own traffic. Additionally, the collaborative should work toward a resolution to which both parties can agree for the most appropriate measuring method—the one that will provide the greatest accuracy and greatest ability to identify carriers sending traffic so that the provisions of [MCL 484.2305a][4] can be fully and accurately honored.
>
> The Commission is sensitive to the need to promptly resolve these issues so that the network can flow efficiently and the appropriate parties receive payment in a timely manner. Therefore, the collaborative effort should not last more than six months from the date of this order and should not be used as a time to address issues unrelated to those recognized in this order. By that time, the parties will have either come to an agreement, or placed their last best offers before the Commission, along with support for their respective positions for Commission resolution, which would take the form of a baseball style arbitration similar to that used by the Commission in arbitration cases filed under 47 USC 251 and 252.

The PSC rejected Verizon's argument that MCL 484.2305a prohibited the holding of Verizon financially liable for unidentified call traffic. The PSC reasoned that from the perspective of the ILECs, traffic coming from Verizon could be considered to have originated with Verizon. The

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[3] The PSC ordered that Verizon was to pay to the ILECs the amount that Verizon's ITAC system showed to be due, plus one-half of the difference between that amount and the amount the ILECs determined was due under the RUM system. The remaining one-half of the difference was to be placed in an interest-bearing account for distribution at the end of a collaborative process, or if no agreement could be reached in that process, through a subsequent process.

[4] MCL 484.2305a deals with the originating, forwarding, and terminating of intrastate call traffic.

PSC found that making Verizon responsible for identifying all call traffic, including its own, served to further the intent of MCL 484.2305a.

In regard to the issue of local transport and termination, which dealt with the service provided by the ILECs to Verizon by terminating in the ILECs' exchanges local calls that originated with Verizon customers, the PSC noted that the ILECs billed Verizon pursuant to either PSC Tariff No. 23 or PSC Tariff 10. The PSC found that transportation and termination charges were controlled by federal law, and that compensation arrangements, which the ILECs had a duty to make, were required to be reciprocal. 47 USC 251(b)(5). The filing of a tariff, in and of itself, was not sufficient to meet the federal requirements. 47 CFR 51.711 required reciprocal compensation to be symmetrical, unless the state public utilities commission established asymmetrical rates pursuant to 47 CFR 51.711(b) or (c). The PSC noted that it had done so pursuant to the ILECs' request, and that the PSC had approved the cost-based tariffs. The PSC concluded that Verizon was required to pay the bills presented by the ILECs for local transport and termination.

In regard to the issues of originating toll access and billing and collection services, the PSC found that the ILECs had determined how the monies should be divided, and concluded that Verizon should pay the bills as presented within ten days of the date of the order.

On January 30, 2007, Verizon filed a notice of payment and an affidavit indicating that it made payments in accordance with the PSC's December 21, 2006, order. The document stated that Verizon distributed $2,494,052.62 to the ILECs, and deposited $816,857.81 into an interest-bearing escrow account.

The collaborative group met in early 2007. On June 21, 2007, the date by which the collaborative process was to have been completed, the group filed an interim report and a request for an extension of time. The report indicated that the parties had agreed that, "in principle, the RUM, if correctly performed, will yield a reasonable bill that can be matched, with minimal variation, to the ITAC generated bill." However, the parties had identified six remaining areas that needed additional time to resolve, including: (1) escrow amounts; (2) finalization of the RUM process; (3) recalculation of the April 2007 bill; (4) corrections to past billings; (5) supplemental information to be provided with RUM bills/audit process; and (6) remaining individual company issues. The parties requested a 60-day extension to complete the collaborative proceeding, and set out a proposed timeline for completion of the process.

In an order entered on July 26, 2007, the PSC granted the parties' request for an extension of time. Regarding the first of the six areas identified as being unresolved, escrow amounts, the PSC stated:

> Further, the first of the listed issues may be resolved by clarification of the December 21 order. The joint filing indicates there is a disagreement about the amount to be placed into escrow as of the December 21 order. The Commission intended that Verizon pay all of the billings for the period in which the T/O ratios were in effect. For billings for service rendered during the period of time in which the MECA companies used the RUM, and on an ongoing basis during the resolution of this dispute, the Commission intended that Verizon pay the amount it calculated as due for terminating toll access using the ITAC method, plus one-

> half of the difference between that amount and the billings rendered by the rural incumbent local exchange providers. The remaining one-half of the difference between the two amounts should have been placed in escrow within the 10 days permitted by the order and on a continuing basis for service rendered while this case is pending. [(Footnote omitted).]

The PSC granted the parties until August 21, 2007, to complete the collaborative process.

On August 2, 2007, Verizon moved to stay that portion of the PSC's July 26, 2007, order dealing with funds to be placed in escrow, and also renewed its motion for rehearing of the PSC's December 21, 2006, order. In an order entered on August 6, 2007, the PSC denied the motion for stay and held in abeyance all issues raised in the motion for rehearing pending a final order in the case.

On August 21, 2007, the PSC Staff filed a summary report of the collaborative, and Verizon filed a statement of its position on the issues not resolved by the collaborative; on the same date, MECA filed a post-collaborative motion for arbitration.

In an order entered on October 25, 2007, the PSC addressed Verizon's petition for rehearing and post-collaborative matters. Initially, the PSC made the following statement regarding MECA's filing of a post-collaborative motion for arbitration:

> MECA misapprehended the Commission's December 21, 2006 order in styling its brief as a petition for arbitration rather than a statement of its position. The Commission indicated that, at the conclusion of the collaborative, the parties should place their "last best offers before the Commission, along with support for their respective positions for Commission resolution, which would take the form of a baseball style arbitration *similar to* that used by the Commission in arbitration cases filed under 47 USC 251 and 252." Order, p. 19 (emphasis added). In baseball style arbitration, "[u]nless the result would be clearly unreasonable or contrary to the public interest, the panel will limit its decision on each issue to selecting the position of one of the parties on that issue." July 16, 1996 order in Case No. U-11134, pp. 2-3. Thus, the Commission indicated that it would use a similar decision-making process. For purposes of this order, MECA's petition is regarded as its statement of position.

The PSC denied Verizon's petition for rehearing.

Regarding the issues remaining after the collaborative process, the PSC observed:

> Almost every issue identified by the parties in their last best offers was decided by the Commission in the December 21 order. The Summary Report contains no recommendation to change that order, and nothing in the parties' statements persuades the Commission that the findings in that order should be reconsidered. In particular (focusing on issues the parties seem to consider unresolved), in the December 21 order the Commission: (1) found RUM to be an acceptable billing method if applied appropriately; (2) found that Verizon should pay for terminating toll access for the period during which the billings were based

> on T/O ratios as billed by the rural ILECs; (3) ordered Verizon to pay to the rural ILECs the amount that its ITAC system shows that it owes on past-due bills plus one half of the difference between that amount and the amount stated in the rural ILECs' RUM-based bills; and (4) found that Verizon may be held responsible for calls its does not identify but sends to the rural ILECs over common trunks with its own traffic. The Commission affirms these findings. Through error, the ordering paragraphs of the December 21 order did not reflect the finding on the T/O ratio-based bills. The Commission directs Verizon to pay any outstanding amount remaining due from the original amounts billed under the T/O ratio method within 30 days of the date this order is issued, with late fees calculated on the basis of the tariffed interest rate contained in the access tariff (0.000292 per day compounded daily) as described in MECA's testimony.

The PSC adopted the RUM method described in MECA's position statement, and ordered that each ILEC should recalculate RUM-based bills beginning with the March 2005 bill or the bill from the month that the ILEC first billed Verizon using the RUM method, whichever was later. The PSC acknowledged that the rendering of RUM-based bills had been inconsistent, and granted Verizon the right to audit the ILECs' bills for the first six months following implementation of the new RUM method, and to audit any bill when the discrepancy between that bill and Verizon's ITAC data exceeded $10,000 in one month. Verizon was to bear the expense of any audit performed. The PSC also acknowledged that, "[m]onies are owed to Verizon for corrections to the RUM-based billing done under the previous method(s), and monies continue to be owed to the MECA companies from the T/O ratio-based billings (plus late fees)." The PSC ordered that all monies previously paid, including those placed in escrow, should be used to offset amounts owed before the parties made any payments to one another.

On November 21, 2007, Verizon claimed an appeal from the PSC's December 21, 2006, and October 25, 2007, orders. This appeal ensued.

II. ANALYSIS

A. STANDARDS OF REVIEW

The standard of review for PSC orders is narrow and well defined. Pursuant to MCL 462.25, all rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, prima facie, to be lawful and reasonable. *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC has the burden of proving by clear and convincing evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment. *In re MCI Telecommunications Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). An order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966).

A final order of the PSC must be authorized by law and be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney Gen v Public Service Comm*, 165 Mich App 230, 235; 418 NW2d 600 (1987).

A reviewing court gives due deference to the PSC's administrative expertise, and is not to substitute its judgment for that of the PSC. *Attorney Gen v Public Service Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999), lv den sub nom *In re Consumers Power Co*, 462 Mich 866 (2000). This Court gives respectful consideration to the PSC's construction of a statute that the PSC is empowered to execute, and this Court will not overrule that construction absent cogent reasons. If the language of a statute is vague or obscure, the PSC's construction serves as an aid to determining the legislative intent, and will be given weight if it does not conflict with the language of the statute or the purpose of the Legislature. However, the construction given to a statute by the PSC is not binding on this Court. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103-109; 754 NW2d 259 (2008). Whether the PSC exceeded the scope of its authority is a question of law that is reviewed de novo. *In re Complaint of Pelland Against Ameritech Michigan*, 254 Mich App 675, 682; 658 NW2d 849, lv den sub nom *Ameritech Michigan v Public Service Comm*, 469 Mich 914 (2003).

The PSC has only that authority granted to it by the Legislature. *Attorney Gen v Public Service Comm*, 231 Mich App 76, 78; 585 NW2d 310 (1998).

A. TERMINATING TOLL ACCESS SERVICES

Verizon argues that the PSC's decision to allow the ILECs to bill Verizon for terminating unidentified toll access traffic that Verizon forwarded but did not originate violates MCL 484.2305a. We agree.

In 2005, the Legislature amended the MTA, in part by adding MCL 484.2305a, which provides:

> (1) Except as otherwise provided by federal law, where technically feasible, a provider originating or forwarding an intrastate call that is terminated on the network of another provider shall do all of the following:
>
> (a) For originated calls, transmit the telephone number of the party originating the call. The telephone number shall be transmitted without alteration in the network signaling information.
>
> (b) For forwarded calls, transmit the telephone number of the party originating the call to the extent such information has been provided by the originating carrier. The telephone number shall be transmitted without alteration in the network signaling information.
>
> (2) The commission may investigate complaints alleging violations of this section and may initiate proceedings under [MCL 484.2203] to resolve disputes between providers regarding identification of traffic and disputes regarding compensation rights and obligations between providers who originate, forward, or terminate intrastate traffic.
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> (3) If the commission determines that the telephone number has not been transmitted as required by this section, the provider against whom the complaint was filed shall demonstrate that it was not technically feasible to transmit the

information, or that it had a legitimate business or other good faith reason for not transmitting the telephone number.

(4) If the commission determines that a provider violated this section, the commission shall determine if the violation resulted in a nonpayment or underpayment of compensation to the complaining provider under the terms of the parties' compensation agreement or its intrastate access tariff. The commission shall determine the amount of the nonpayment or underpayment and order the violating provider to make payment. The commission may assess a fine against the violating provider in an amount equal to 2 times the payment amount, or may take any other action authorized by Michigan law that it considers necessary.

(5) A provider that originates an intrastate call subject to section 251(b)(5) of the telecommunications act of 1996, 47 USC 251, shall agree to establish a reciprocal compensation arrangement for the termination of those calls. Originating and terminating providers shall agree to begin negotiations no more than 30 days after the originating provider receives a request from a terminating provider to establish an arrangement. During the negotiation period, reciprocal compensation rates shall be assessed by the terminating carrier under an interim arrangement with the originating carrier. Originating and terminating providers shall use good faith efforts to conclude negotiations and finalize an agreement within a reasonable time period.

(6) A provider that originates an intrastate intra-LATA call subject to a terminating carrier's intrastate access tariffs shall pay the tariffed rate for termination of the call.

(7) The commission may resolve disputes under this section between originating and terminating providers related to negotiation of the reciprocal compensation agreement and the payment of the tariffed rates.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. The first criterion in determining intent is the specific language of the statute. *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 773 NW2d 243 (2009). If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Verizon North, Inc v Public Service Comm*, 260 Mich App 432, 437-438; 677 NW2d 918 (2004).

The PSC, relying on its June 25, 1997, decision in Case No. U-12340 in which it noted that a forwarding carrier is in a superior position to identify an originating carrier, reasoned that in circumstances where Verizon did not transmit sufficient information to allow the ILECs to identify the originating carriers, Verizon, as the forwarding carrier, should pay the ILECs for terminating toll access. However, the Legislature is presumed to be familiar with the rules of statutory construction, and when promulgating new laws is presumed to be aware of the consequences of its use of statutory language. *In re MKK*, 286 Mich App 546, 556; 781 NW2d 132 (2009). After Case No. U-12340 was decided, the Legislature added MCL 484.2305a(1)(b)(6), which expressly states that, "*A provider that originates* an intrastate intra-

LATA call subject to a terminating carrier's intrastate access tariffs *shall pay the tariffed rate for termination of the call*." (Emphasis added.) There is no dispute that Verizon is not originating calls that it forwards to the ILECs. Accordingly, Verizon cannot be deemed the provider that *shall pay* the tariffed rate for termination of the call. Rather, as MCL 484.2305a(1)(b) states, Verizon's statutory duty as a forwarding provider is expressly limited to "transmit[ing] the telephone number of the party originating the call to the extent such information has been provided by the originating carrier." There is no evidence that Verizon has not complied with this statutory directive.

We recognize that the ILECs could not identify the originating carrier for some calls forwarded to them by Verizon. Nonetheless, the Legislature is presumed to act with knowledge of administrative statutory interpretations. *VanBuren Twp v Garter Belt, Inc*, 258 Mich App 594, 606-607; 673 NW2d 111 (2003), lv den 470 Mich 880, cert den 543 US 1002; 125 S Ct 620; 160 L Ed 2d 462 (2004). Accordingly, we cannot sanction liability imposed on Verizon in the event the originating carrier did not supply Verizon, and thus the ILECs, with sufficient information. To do so would contravene the plain language of MCL 484.2305a. *Verizon North, Inc.* 260 Mich App at 437-438. We conclude that the PSC's decision on this issue is unlawful. MCL 462.26(8). Given this deposition, we need not consider Verizon's claim that the ILEC's can determine actual usage.

C. LOCAL TRANSPORT AND TERMINATION SERVICES

Verizon argues that the PSC's orders unlawfully permit the ILECs to charge Verizon for local transport and termination access, but do not require the ILECs to pay Verizon when Verizon provides the same services to the rural ILECs. We disagree.

47 USC 251 deals with interconnection, and provides in pertinent part:

> (a) General duty of telecommunications carriers. Each telecommunications carrier has the duty---
>
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
>
> (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.
>
> (b) Obligations of all local exchange carriers. Each local exchange carrier has the following duties:
>
> * * *
>
> (5) Reciprocal compensation. The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.
>
> (c) Additional obligations of incumbent local exchange carriers. In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate. The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection. The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network---

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

* * *

(f) Exemptions, suspensions, and modifications.

(1) Exemption for certain rural telephone companies.

(A) Exemption. Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

The Code of Federal Regulations contains several provisions that are pertinent to the analysis of this issue. 47 CFR 51.701(e) provides:

(e) Reciprocal compensation. For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

47 CFR 51.711 provides in pertinent part:

(a) Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

*   *   *

(b) A state commission may establish asymmetrical rates for transport and termination of telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such a higher rate is justified.

The ILECs provided service to Verizon by terminating local calls placed by Verizon's customers. The ILECs charged Verizon for these services pursuant to MPSC Tariff 23 or 10. Verizon provided the same service to the ILECs, but Verizon did not have in place a tariff regarding these services, so did not bill the ILECs for these services.

The ILECs are rural telephone companies under the Federal Telecommunications Act (FTA), and thus are required to "establish reciprocal compensation arrangements" for the transportation and termination of local call traffic, but are not required to negotiate interconnection agreements. 47 USC 251(b)(5), (c)(1), (f)(1)(A). A compensation arrangement must be reciprocal, and must be symmetrical unless the state public utilities commission (the PSC here) establishes asymmetrical rates. 47 CFR 51.701(e); 47 CFR 51.711(a)(1), (b).

Verizon does not argue that the PSC was not authorized to establish asymmetrical rates for local transport and termination services. Rather, Verizon argues that the PSC erred in approving the ILECs' rates because those rates were not reciprocal and were not arrived at through the process described in 47 CFR 51.711(b). Verizon seems to argue that rates can be reciprocal only if they are contained in a single document. However, Verizon cites no authority for this assertion, and neither 47 USC 251 nor the relevant regulations contains such a requirement. MECA's brief indicates that at one point, both the ILECs and Verizon had tariffs in place establishing compensation rates for local transport and termination, but that Verizon unilaterally withdrew its tariff. Verizon does not explain why it took this action, or even mention this fact in its brief. We conclude that Verizon has not established that its unilateral act of withdrawing its tariff served to place the ILECs in violation of the requirement that their rates be reciprocal.

The PSC concluded that because it had approved studies evaluating the cost to the ILECs of providing various telecommunications services, including local transport and termination of call traffic, in previous cases (Nos. U-12261 and U-11448), and had approved the costs in both cases, the requirements of 47 CFR 51.711(b) were satisfied. Verizon has not demonstrated why this procedure did not comply with 47 CFR 51.711(b) for purposes of establishing asymmetrical rates. We cannot conclude that Verizon has established by clear and convincing evidence that the PSC's decision on this issue is unlawful or unreasonable. MCL 462.26(8).

A. ARBITRATION

Verizon argues that the PSC erred in ordering "baseball style arbitration." We disagree.

Section 252 of the FTA, 47 USC 252, provides in pertinent part:

> (a) Agreements arrived at through negotiation.
>
> (1) Voluntary negotiations. Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. . . .
>
> * * *
>
> (b) Agreements arrived at through compulsory arbitration.
>
> (1) Arbitration. During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, that carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 203a of the MTA, MCL 484.2203a, provides in pertinent part:

> (1) For all complaints involving a dispute of $1,000.00 or less, a dispute under section 203(14), or upon the consent of all parties after the complaint is filed, for a period of 60 days after the date the complaint is filed under section 203, the parties shall attempt alternative means of resolving the complaint.
>
> (2) Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record, including, but not limited to, settlement conferences, mediation, and other informal dispute resolution methods. If the parties cannot agree on an alternative means within 10 days after the date the complaint is filed, the commission shall order mediation. Within the 60-day period required under subsection (1), a recommended settlement shall be made to the parties.
>
> (3) Within 7 days after the date of the recommended settlement, each party shall file with the commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case under section 203.
>
> (4) If a party rejects or fails to respond within 7 days to the recommended settlement, then the application or complaint shall proceed to a contested case hearing under section 203.

Verizon correctly notes that the instant case does not "fall within the ambit" of either 47 USC 251 or MCL 484.2203a. However, we cannot agree with the assertion that the PSC simply ordered arbitration in its December 21, 2006, order. The PSC directed the parties to collaborate going forward in an effort to resolve remaining issues, and indicated that it would then resolve those issues in a proceeding that would "take the form of a baseball style arbitration similar to that used by the Commission in arbitration cases filed under 47 USC 251 and 252." (PSC decision, p 19). However, after the parties completed the collaborative process, the PSC did not conduct an arbitration proceeding. Rather, the PSC considered the parties' post-collaborative submissions, along with the evidence presented at the initial contested case hearing, and on October 25, 2007, issued an order deciding the unresolved issues. In essence, the PSC completed the contested case hearing when it resolved the issues that remained after the collaborative process. Verizon has not shown that the PSC compelled the parties to engage in arbitration, or that the PSC acted unlawfully or unreasonably. MCL 462.28(8).

A. AWARDS FOR UNNAMED COMPLAINANTS

Verizon argues that the PSC erred in determining that MECA had standing to recover damages for ILECs that were not named as parties to the complaint. We disagree.

In support of its claim, Verizon notes that in *SBC Michigan v Public Service Comm*, unpublished per curiam opinion of the Court of Appeals, issued September 28, 2006 (Docket Nos. 254980 and 261341), this Court affirmed the PSC's holding that absent statutory authority, the PSC cannot grant monetary relief to non-parties. Verizon asserts that this holding was consistent with federal rulings to the effect that no monetary relief can be granted to an association member that is not named as a party to a complaint. However, it is undisputed that the attachments to the complaint named the ILECs that were seeking monetary damages, and specified the amount of damages each named ILEC was seeking. This fact distinguishes this matter from that before the PSC in *SBC Michigan*. Thus, the ruling in *SBC Michigan*, that unidentified companies cannot collect money damages, is consistent with the PSC's decision in this case (i.e., awarding money damages only to those ILECs identified as seeking same).

MECA and specifically identified ILECs raised claims against Verizon. MECA did not attempt to collect monetary damages other than those claimed by the identified ILECs. The PSC awarded no monetary damages other than those specifically requested. Verizon counterclaimed against the ILECs as if those companies had been named in the caption of MECA's complaint. Verizon was not deprived of any due process. The PSC had the authority resolve the dispute and render the necessary relief. See MCL 484.2205(1) (PSC has authority to investigate and resolve complaints under the MTA). Verizon has not shown by clear and convincing evidence that the PSC's decision on this issue is unlawful or unreasonable. MCL 462.26(8).

Affirmed in part and reversed in part. Neither party having fully prevailed, no costs should be imposed. MCR 7.219.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Brian K. Zahra